

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**NASHVILLE, TENNESSEE**

**September 2, 2003**

**IN RE:**

**NOTIFICATION OF CUSTOMER TRANSFER  
BY LIGHTYEAR COMMUNICATIONS INC.  
AND THE FREE NETWORK, LLC.**

**DOCKET NO.  
03-00368**

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**ORDER APPROVING CUSTOMER NOTICE LETTER**

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This matter came before Chairman Deborah Taylor Tate, Director Sara Kyle, and Director Ron Jones of the Tennessee Regulatory Authority (the "TRA" or "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on July 7, 2003 for consideration of the *Notification* of a partial customer base transfer from The Free Network, LLC ("TFN") to Lightyear Communications Inc. ("Lightyear" - together the "Parties"), requiring approval of a customer notification letter pursuant to TRA Rule 1220-4-2-.56(2)(d).

**TRA Rule 1220-4-2-.56(2)(d)(2) – (4)**

TRA Rule 1220-4-2-.56(2)(d) provides as follows:

- (d) In the case of a transfer of a customer base between two or more telecommunications service providers, the Authority, upon petition by the acquiring telecommunications service provider, may deem that sufficient notice has been given and approval received from the affected customers when the following criteria are met:

- ...
2. A notification letter, pre-approved by the Authority, shall be mailed by U.S. First Class Postage by the telecommunications service provider being acquired to its customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a certain date unless the customer selects another telecommunications service provider. This customer notification shall be mailed to the customers no

less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part. The Authority may waive the thirty (30) day notice requirement of this part for good cause shown.

3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.
4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

### **The Notification**

The *Notification*, which was filed with the TRA on May 29, 2003, describes a transfer of 187 Tennessee customers from TFN to Lightyear. Lightyear received its certification in Tennessee as a reseller of telecommunications services on July 31, 1995 in Tennessee Public Service Commission Docket No. 95-02612 and as a competitive local exchange company on February 22, 2001 in TRA Docket No. 00-00996. TFN was certified to provide operator and/or resold telecommunications services in Tennessee on September 14, 1999 in TRA Docket No. 99-00577. TFN's certification was revoked by the TRA on January 23, 2002 for non-payment of regulatory fees.<sup>1</sup> TFN has been a reseller of MCI services and has also resold Lightyear's MCI services to 187 Tennessee customers. It is these 187 Tennessee customers that TFN is now proposing to transfer to Lightyear.

Pursuant to the proposed transfer, the Parties are seeking approval of a customer notification letter concerning the transfer of customer base from TFN to Lightyear. TRA Rule 1220-4-2-.56(2)(d) provides that, in case of a transfer of customer base from one telecommunications service

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<sup>1</sup> See *Order Revoking Authority to Conduct Business as a Public Utility in the State of Tennessee for Non-Payment of Regulatory Fees*, Docket No. 99-00577 (January 23, 2002).

provider to another, the TRA may deem that the provider whose customer base is being acquired has met the notification requirements of the TRA's anti-slamming rules by sending a letter to its affected customers notifying them of the change in provider. This rule requires TRA approval of the letter and, by implication, the transfer of customer base.

In compliance with the requirements of a majority of the states in which TFN has customers and with the requirements of the Federal Communications Commission, Lightyear mailed out the customer notification letter on May 6, 2003, prior to seeking TRA approval.<sup>2</sup> Even so, the customer notification letter satisfies all TRA requirements with the following exceptions: although the names "The Free Network" and "Lightyear" were both included on the letterhead, only "Lightyear" appeared on the envelope;<sup>3</sup> and the letter did not inform customers that they would be provided thirty days' notice of any rate increase within ninety days of the transfer, as required by TRA Rule 1220-4-2-.56(2)(d)(4), but did state that there would be no increase in rates. Lightyear contends that sending a second letter which complies with these requirements would be expensive and confusing to customers and, for these reasons, requests a waiver of these requirements.

#### **The July 7, 2003 Authority Conference**

At the July 7, 2003 Authority Conference, the Directors discussed with a representative of Lightyear the waiver of several regulatory requirements, including the language mandated by TRA Rule 1220-4-2-.56(2)(d)(4).<sup>4</sup> Although the TRA has previously required modification of a customer notification letter to include this language, a majority of the Directors voted to waive this requirement and approve the customer notification letter filed with the TRA on May 29, 2003, and, by implication, the transfer of the 187 Tennessee customers from TFN to Lightyear, since these

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<sup>2</sup> TFN is transferring to Lightyear approximately 8,000 to 10,000 customers located across 46 states.

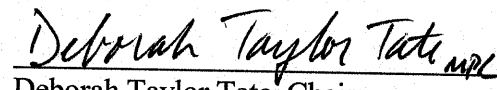
<sup>3</sup> TRA Rule 1220-4-2-.56(2)(d)(2) requires a customer notification letter to be sent by the telecommunications service provider being acquired. Accordingly, the TRA has required that either the logo or name of the current service provider be included on both the letterhead and the envelope.

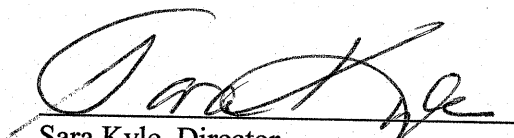
<sup>4</sup> Robin Norton, a consultant with Technologies Managements, Inc., participated during the Conference via telephone.

customers are currently receiving service from an uncertificated provider. The Directors predicated this waiver upon the condition that Lightyear's General Counsel provide written assurance to the TRA that the rates of the 187 affected Tennessee customers will not be increased within the first ninety days following the transfer of customer base.<sup>5</sup>

**IT IS THEREFORE ORDERED THAT:**

1. The transfer of 187 Tennessee customers from TFN to Lightyear is approved.
2. The customer notification letter previously sent by Lightyear is approved, subject to the condition set forth in Paragraph 3.
3. Lightyear's General Counsel shall provide written assurance to the TRA that the rates of the 187 affected Tennessee customers will not be increased within the first ninety days following the transfer of customer base.<sup>6</sup>

  
Deborah Taylor Tate, Chairman

  
Sara Kyle, Director

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Ron Jones, Director

<sup>5</sup> \* \* \* Director Ron Jones did not vote in favor of the prevailing motion. Expressing his desire to ensure that customers receive notice in a manner consistent with the TRA's past decisions, Director Jones moved in part that Lightyear be ordered to resend the required notification letter in an envelope displaying the name of customers' current provider. Director Jones' motion failed for lack of a second. The remainder of Director Jones' motion was consistent with the majority's decision to waive the notification requirement in TRA Rule 1220-4-2-.56(2)(d)(4).

<sup>6</sup> On July 10, 2003, the TRA received a letter from Lightyear's General Counsel confirming "that Lightyear will not increase the long distance rates to those customers transferred from The Free Network, LLC ("TFN") to Lightyear for a period of at least ninety days following the actual transfer." Letter from John J. Greive, Vice President of Regulatory Affairs and General Counsel, to Chairman Deborah Taylor Tate (July 9, 2003).